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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re JOSHUA T., et al., Persons
Coming Under the Juvenile Court Law.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

B305423

(Los Angeles County
Super. Ct. No. 20CCJP00399A,
B, C)

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Reversed in part with directions.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel for Plaintiff and Respondent.

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K.W. (mother) challenges the jurisdictional findings and dispositional order of the juvenile court as they pertain to her three children. Mother contends there was no substantial evidence that she failed to protect her children from sexual abuse or that she was a current user of methamphetamines, and the juvenile court abused its discretion in removing her children from her custody.

We exercise our discretion to consider mother's challenge, which addresses some, but not all, of the allegations of the sustained petition. On the merits, we agree with mother that there is no substantial support in the record for the juvenile court's findings that mother failed to protect the children from sexual abuse or that mother was a current user of methamphetamines. We therefore direct the juvenile court on remand to strike those findings from the sustained petition. Further, because we cannot conclude with certainty that the challenged findings were not material to the juvenile court's dispositional order, we reverse the dispositional order as to mother and remand the matter to the juvenile court to enter a new dispositional order.

FACTUAL AND PROCEDURAL BACKGROUND

A. Mother's Mental Health Issues; Violence Between Mother and the Maternal Uncle

K.W. (mother) has three children: Joshua T. (born in January 2011), K. (born in March 2015), and D. (born in February 2019). Joshua Sr. is Joshua's father, and D.H. (father) is K.'s and D.'s father.

Mother has struggled with mental health issues, including depression and post-traumatic stress disorder, since her father's death when she was a teenager. She has been hospitalized twice,

apparently for mental health conditions, and has threatened suicide. Mother has been prescribed psychotropic medication for anxiety and depression, and she smokes marijuana to help her manage anxiety.

Sometime in 2019, mother allowed her brother (the maternal uncle) to live with the family after he was released from prison. Shortly thereafter, the family had to move out of their apartment, apparently as a result of the maternal uncle's conduct. The children moved in with paternal great-aunt G. (Aunt G.), who operated a licensed day care center in her home. The parents were homeless for a time; subsequently, the parents separated, and father moved into Aunt G.'s house with the children.

The family reported two incidents of domestic violence between mother and her brother, apparently in 2019 and early 2020. During one incident, the maternal uncle struck mother in the face; when Joshua intervened to protect mother, his uncle placed him in a headlock. On another occasion, the uncle hit Joshua in the face, causing his nose to bleed.

B. Temporary Restraining Order; Sexual Abuse Report

In December 2019, father obtained a temporary restraining order that prohibited mother from having any contact with father or the children. Father said he had obtained the restraining order because mother had been depressed, threatened to kill herself in front of the children, and threatened to harm father's family. When mother refused to go to counseling, he "took the kids [until] she could show [she was] getting some type of help." Father also described an incident of physical violence between himself and mother, during which mother scratched father's eye.

Aunt G. also obtained a temporary restraining order in December 2019 that required mother to stay 100 yards away from Aunt G. and her children. Mother admitted threatening the paternal family by text; she said she made the threats because father's family was not allowing her to see her children.

Notwithstanding the temporary restraining order, father allowed mother to see the children for a few hours on December 25, 2019. During that visit, four-year-old K. told mother that Aunt G.'s eighteen-year-old son, Valentino, had touched her vagina. Mother made a police report the same day. A police officer interviewed K., who disclosed that Valentino had touched her private parts on Christmas Eve after she fell asleep on the couch. The police department referred the family to the Los Angeles County Department of Children and Family Services (DCFS).

Eight-year-old Joshua told DCFS that when he was four years old, Aunt G. had told Valentino to help Joshua get dressed after a shower. Instead, Valentino took off his clothes, touched Joshua's penis, and made Joshua touch Valentino's penis. Joshua also said he once awoke from a nap to see K. on top of Valentino, and Valentino "rubbing on [K.'s] private parts." When asked whether he had ever told anyone about these incidents, he said he told his mother and the police "today;" his mother "cried."

Mother reported that there had been a prior accusation of sexual abuse by Valentino, which had been investigated by police and DCFS. She said that in 2018, Valentino's brother, Hezekiah, had reported walking into the bedroom and seeing Valentino ejaculating in K.'s vagina. Mother and father immediately took K. to Children's Hospital, where she was medically examined.

The hospital notified the police, but mother said, “nothing came of it.”

DCFS located a police report, which said K. had been brought to Children’s Hospital on July 22, 2018, after Hezekiah witnessed reporting inappropriate sexual contact between Valentino and K. She was treated for a urinary tract infection and vaginitis. The doctor who examined K. said urinary tract infections and vaginitis can be caused by sexual assault, but can also have other causes, and that a “preliminary examination of [K.] did not show any signs of traumatic condition or signs of penetration.” Mother reported that Hezekiah, who had been adopted by Aunt G., had been prenatally exposed to narcotics, and as a result experienced hallucinations, bipolar disorder, and seizures. Aunt G. told a social worker that Hezekiah had admitted fabricating the sexual abuse allegation. The report was “evaluated out,” and no criminal action was taken against Valentino.

DCFS also located the report of its own 2018 investigation, which stated that sexual abuse allegations had been made against Valentino not only by Hezekiah, but also by a child who attended day care in Aunt G.’s home, and that Aunt G. was being investigated by the Community Care Licensing Division (CCLD), DCFS, and law enforcement. The report noted that Hezekiah had “provided different stories” to different investigators, and an investigating detective believed Valentino was a “good kid.” Hezekiah and his siblings denied being sexually abused. DCFS reported that “[a]ll children appeared to be credible, even when they denied sexual abuse towards them by anyone in the home Upon follow up with Hezekiah, he reported that he lied because he wanted to get his brother Valentino in trouble.

The children all . . . deny sexual abuse to them, [and] deny witnessing sexual abuse [of] others.” Thus, “based on the children’s statements, [medical] findings, and in consultation with [the] CCLD Investigator,” DCFS deemed the report “inconclusive.”¹

Notwithstanding the conclusions of DCFS and the police, father said after the reports of abuse, he and mother did not allow Valentino to be around the children unless one of the parents was present.

C. Mother’s One-Time Use of Methamphetamine; Six-Month Domestic Violence Restraining Order

On January 7, 2020, mother reported that her brother had tricked her into smoking marijuana laced with crystal methamphetamine. Mother said this was the first and only time she used methamphetamine. Mother began crying and asked for therapy and rehabilitation.² Father knew about the incident and believed mother’s methamphetamine use had been accidental, telling a CSW that mother “gave her brother money to go buy marijuana, he came back and he had laced the marijuana with meth. At the time we didn’t even know he was using that. I guess they ended up smoking and she ended up hallucinating terribly. She’s never used any other drugs besides marijuana, so

¹ In a subsequent report filed in this proceeding, DCFS acknowledged that “a full investigation of the children [K.] and Joshua was not completed nor were they spoken to at that time regarding the abuse.”

² Subsequently, mother denied smoking methamphetamine, saying she had not smoked the marijuana her brother gave her because “it had crystals in it.”

she didn't know how to handle herself. She thought she was going to die. She didn't even know what meth looked like." Father said mother had never used methamphetamine outside of that incident.

On January 9, 2020, father obtained a six-month domestic violence restraining order, which required mother to stay 100 yards away from father's home and place of employment. Father was given legal and physical custody of K. and D., and mother was not permitted any visitation.

D. Juvenile Dependency Petition

On January 22, 2020, DCFS filed a juvenile dependency petition pursuant to Welfare and Institutions Code³ section 300, subdivisions (a), (b), (d), and (j). The petition alleged that mother and father had a history of verbal and physical altercations in the children's presence (counts a-1, b-3); mother and father failed to protect K., and mother failed to protect Joshua, from sexual abuse by Valentino, a member of father's household (counts b-1, b-2, d-1, d-2, j-1, j-2); mother had a history of mental and emotional problems, including a diagnosis of depression, anxiety, and post-traumatic stress disorder, which render her unable to care for the children (count b-4); mother created a dangerous home environment for the children by engaging in violent verbal and physical altercations with extended family members while the children were present in the home (count b-5); mother had a history of substance abuse, including marijuana, and was a current user of methamphetamines (count b-6); and father was a current abuser of marijuana (count b-7).

³ All subsequent statutory references are to the Welfare and Institutions Code.

At the January 23, 2020 detention hearing, the court ordered the three children removed from mother and placed with their fathers.

E. Adjudication and Disposition

The juvenile court held a jurisdiction/disposition hearing on March 3, 2020. At that hearing, the counsel for mother and for the children argued that the evidence did not establish that mother failed to protect the children from sexual abuse. Mother's counsel urged that mother "has been jumping up and down about this alleged sexual abuse for some time. . . . [¶] . . . [¶] . . . Frankly, if [mother] failed to protect [K.] from sexual abuse, so did the Department. They evaluated out a referral in 2018. [¶] So I would ask that if Your Honor is going to sustain those allegations, that my client be stricken. She did not fail to protect. She did what she needed to do in order to protect the children." The children's counsel agreed, noting that mother reported the alleged abuse to the police the day she found out about it, and, in any event, mother "wasn't living with the children."

Mother's counsel also contended that DCFS had not established that mother abused methamphetamine. Counsel urged: "The mother gave an explanation of what happened. Again, an issue with the maternal uncle supplying her with what she did not know to be methamphetamine. She is not a methamphetamine user. She does not intend to use methamphetamine anymore. This . . . marijuana was tainted when she smoked. She had what can be described as a freak-out session that she would never want to revisit."

Counsel for DCFS asked the court to sustain the petition as pled. Specifically, he argued that the court should sustain the failure-to-protect allegations because mother had allowed

Valentino to reside with the family despite knowing about the 2018 sexual abuse allegations.

After hearing argument, the court sustained all the allegations of the petition. The court noted that the parents “knew about [Valentino’s] propensities and nonetheless allowed him to be a member of the household and to have access to the children and actually assist in the parenting of the children by doing such things as described by the four-year-old as drying them with a towel in the bathroom alone after bathing and things of that nature where he had access to the child and could molest the child. Those kinds of things should never have been allowed by the parents.”⁴

With regard to disposition, the court ordered the children removed from mother and placed with their fathers under DCFS supervision. The court ordered mother to submit to eight on-demand drug tests, enroll in individual counseling, undergo a psychological assessment, enroll in sex abuse awareness counseling, and take all prescribed medications. Mother was granted monitored visitation with the children.

Mother timely appealed.

⁴ The court’s reference to Valentino assisting a “four-year-old” after a bath appears to refer to Joshua’s statement that when he was about four years old, Valentino touched his penis while helping him get dressed after a bath. As we discuss below, there is no evidence that Joshua told mother about the incident until many years later, or that mother had reason prior to that incident to be suspicious of Valentino’s behavior around young children. The court may have been confusing the incident concerning Joshua, which had happened several years earlier, with the present allegations concerning K., who was then four years old.

DISCUSSION

Mother concedes that there was evidence to support many of the counts of the petition, but she urges this court should reverse the findings that she failed to protect the children from sexual abuse, and that she abused marijuana and methamphetamines. She also urges the juvenile court abused its discretion in ordering the children removed from her custody.

DCFS contends that because mother does not challenge all the allegations of the petition, her appeal is nonjusticiable. In the alternative, it urges that substantial evidence supported the true findings as to each count of the petition, the children were in substantial danger in mother's custody, and there were no reasonable means to protect the children without removing them from mother.

I.

Mother's Appeal Is Justiciable

We begin with the question of justiciability. DCFS urges that because mother does not challenge all of the jurisdictional findings, this court cannot provide her with effective relief, and thus her appeal is not justiciable. Mother acknowledges that some of the jurisdictional findings will not be reversed regardless of the outcome of this appeal, but she contends that the court should consider the merits of her appeal because the challenged jurisdictional findings serve as the basis of the dispositional order and may prejudice her in the future.

"As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) We nonetheless retain discretion to consider the merits of a parent's appeal (*In re I.A.*

(2011) 201 Cal.App.4th 1484, 1493), and often do so when the finding ‘(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction” [citation].’ (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763; see also *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064–1065.)” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

We agree with mother that a review of the merits of the failure-to-protect and drug abuse counts are warranted here. Mother challenges not only these jurisdictional findings, but also the dispositional order based on those findings. As mother notes, the juvenile court ordered her to complete a course on protecting children from sexual abuse and to drug test, and ordered the children removed from her care. Thus, the challenged findings are relevant not only to jurisdiction, but to the specific elements of mother’s case plan. Moreover, as other courts have noted, findings of failure to protect children from sexual abuse are “pernicious” and “carr[y] a particular stigma.” (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452 [exercising discretion to consider failure to protect finding, even though other jurisdictional findings were not challenged].) And, significantly, this case came to DCFS’s attention only *because of* mother’s protective actions in notifying the police of K.’s statements to her. It would be ironic, indeed, if mother’s protective conduct were the basis of the court’s failure-to-protect finding—and might, in the future, discourage these or other parents from reporting abuse or seeking the

county's assistance in protecting their children. For these reasons, we will consider mother's appeal on the merits.

II.

The Failure-to-Protect and Methamphetamine Use Findings Were Not Supported by Substantial Evidence

A. Legal Standards

Section 300 provides that a child is within the jurisdiction of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child” (subd. (b)), or “the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse” (subd. (d)), or “the child’s sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected” (subd. (j)).

We review a juvenile court’s jurisdictional findings for substantial evidence. “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations.” ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “ ‘ “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]” ’ ” (*Ibid.*)

B. The Failure-to-Protect Finding Was Not Supported by Substantial Evidence

Mother contends the juvenile court's finding that she failed to protect her children from sexual abuse was not supported by substantial evidence.⁵ For the reasons that follow, we agree.

Although the record unquestionably supports the juvenile court's finding that Valentino sexually abused Joshua when he was four years old—i.e., in about 2015—there is no evidence that mother was made aware of the abuse at that time. To the contrary, Joshua said he revealed the abuse for the first time in December 2019. Nor is there any evidence that, prior to 2015, mother knew of any facts that should have given her reason to suspect sexual abuse by Valentino. We therefore find no substantial evidence that mother knew or should have known of the sexual abuse of Joshua by Valentino, as alleged in counts b-2, d-2, and j-2.

With regard to the sexual abuse of K. (counts b-1, d-1, and j-1), the undisputed evidence is that when mother learned that Hezekiah had accused Valentino of sexually abusing K. in July 2018, she immediately took K. to Children's Hospital, where K. was examined and the police were notified. Investigations by the police and DCFS followed, at the conclusion of which mother was told that DCFS deemed the report "inconclusive" and that no criminal action would be taken against Valentino.

⁵ Counts b-1, b-2, d-1, d-2, j-1, and j-2 allege that K. and Joshua were sexually abused by Valentino, and that mother and father "failed to protect the [children] in that the parents knew or reasonably should have known of the sexual abuse of the [children] by [Valentino]."

There was no evidence that Valentino again victimized K. in the following year and a half during which K. was in mother's custody. To the contrary, the sexual abuse that led to the filing of the present petition occurred only *after* mother and father had separated, and father had obtained a restraining order that prevented mother from having any contact with the children. Under these circumstances, mother was, at the time K. was victimized in December 2019, legally prevented from protecting K. from further sexual abuse.

Notwithstanding the existence of the restraining order, when K. told mother in December 2019 that she had been touched inappropriately by Valentino, mother reported the incident the same day. In doing so, moreover, mother alerted the police and DCFS to the fact that there had been a prior sexual abuse accusation against Valentino—an accusation that DCFS appears to have become aware of only as a result of mother's report. In short, it appears that mother did everything legally within her power to protect K. from sexual abuse.

Although DCFS acknowledges that mother could not have protected K. from sexual abuse in December 2019, it suggests there was another alleged incident of sexual abuse of K. of which mother had been made aware but did not report. Specifically, DCFS notes that the January 23, 2020 detention report says mother referred to an incident "about one or two years ago" in which K. said Valentino "touched her privates." DCFS asserts this incident was "distinct from the July 2018 child welfare report that DCFS investigated," and that mother should have reported this separate event to the authorities.

Having reviewed the entire appellate record, we conclude the portions of the record DCFS cites do not suggest an additional

episode of abuse, but instead were imprecise descriptions, either by mother or by the CSW who interviewed her, of the same event. Mother was interviewed at least three times about alleged sexual abuse of K.; each time, she referred to a single prior event in which Valentino was accused of sexually abusing K. Although there were some discrepancies in the way the prior incident was described, as well as the date on which the alleged abuse was said to have occurred, mother never suggested that there had been more than one past allegation of sexual abuse of K. by Valentino. We thus reject DCFS's suggestion that mother failed to report an incident of sexual abuse of K. of which she was aware.

DCFS also suggests that mother admitted seeing Valentino masturbate in front of K. The sole citation for this assertion is from an anonymous emergency referral made on December 25, 2019. Neither the source nor the recipient of the alleged statement is identified, and there is no evidence that mother ever told DCFS or law enforcement that she witnessed such an incident.

We suspect that the referral is an imprecise report of mother's statement to police (as reflected in the December 25, 2019 police report) that "there was a previous incident . . . [in which] *Hezekiah had told [mother]* that he walked into the bedroom and observed [Valentino] with his penis placed on [K.'s] vagina with a white fluid coming out that he believes was ejaculate." In any event, we do not consider an unattributed statement to an unknown hearer to be substantial evidence of abuse.

Finally, DCFS urges that mother failed to protect K. because she permitted K. to live in Aunt G.'s home, where

Valentino was also living, in October 2019, approximately two months before father obtained the restraining order against mother on December 17, 2019. Although the timing of some of the relevant events is not entirely clear, there is some support in the record for DCFS's suggestion that K. moved into Aunt G.'s home before father obtained the restraining order. We note, however, that DCFS had investigated and deemed "unfounded" the prior accusation of sexual abuse. There is, moreover, no evidence that Aunt G.'s license to operate a daycare center in her home was ever revoked. In light of DCFS's determination that the sexual abuse allegation of K. by Valentino was unfounded, we cannot find that mother failed to protect her children by allowing them to live in Aunt G.'s home.

For all of these reasons, we conclude that substantial evidence did not support the findings that mother failed to protect her children from sexual abuse, as alleged in counts b-1, b-2, d-1, d-2, j-1, and j-2 of the petition.

C. The Allegation that Mother Was a Current User of Methamphetamines Was Not Supported by Substantial Evidence

Mother also contends that substantial evidence did not support the juvenile court's finding that she was a current user of methamphetamines.⁶ We agree.

⁶ Count b-6 of the petition alleges: "[Mother] has a history of substance abuse, including marijuana, *and is a current user of methamphetamine* and marijuana, which renders the mother incapable of providing regular care and supervision of the children. [K.] and [D.] are of such a young age that the children require constant care and supervision[,] and the mother's substance abuse interferes with providing regular care and

There is no dispute, and the record supports the juvenile court's conclusion, that mother regularly used marijuana, and that she used methamphetamine once, in early January 2020. There is *no* evidence, however, that mother's methamphetamine use was intentional; to the contrary, the statements of both mother and father suggest that mother inadvertently smoked methamphetamine when her brother provided her with a methamphetamine-laced marijuana cigarette. There also is no evidence that mother used methamphetamine on any other occasion, or that she intends to do so in the future. Therefore, the juvenile court's finding that mother "is a *current user* of methamphetamine" is not supported by substantial evidence.⁷

We reject mother's contention, however, that there was insufficient evidence to support the juvenile court's finding that mother's admitted marijuana use put her children at risk of harm. Mother acted erratically and exhibited poor judgment

supervision of the children. The mother's substance abuse endangers the children's physical health and safety, and places the children at risk of serious physical harm, damage, and danger." (Italics added.)

⁷ DCFS's suggestion that mother smoked the marijuana cigarette provided to her by her brother "[even] though she observed the substance was laced with crystals" is not supported by the record. The portion of the detention report cited by DCFS states: "[CSW] received a subsequent call from Mother. Mother sounded calm at the beginning of the call[;] however[,] her mood escalated to a frantic cry. Mother disclosed to CSW that yesterday, 01/05/20, [maternal uncle] tricked Mother into smoking crystal meth. Mother said she thought she was just using marijuana, but she felt different from when she used marijuana previously."

throughout these proceedings, including permitting her brother to live with the family, allowing her brother to purchase marijuana for her, and engaging in physical altercations with father and members of her family. Although these incidents cannot be tied with certainty to mother's marijuana use, the juvenile court was within its discretion in finding that marijuana played a role in these and other incidents. We therefore conclude that the juvenile court's finding that mother's marijuana use interfered with her care of the children was supported by substantial evidence.

II.

Because We Have Reversed Some of the Jurisdictional Findings, We Must Also Reverse the Dispositional Order as to Mother

The final issue for us to determine is whether the reversal of some of the bases for jurisdiction requires remand for a new dispositional hearing. Where only some of the grounds for a juvenile court's action are supported by substantial evidence, we may remand for a redetermination of an appropriate dispositional order. (See *In re Carmaleta B.* (1978) 21 Cal.3d 482, 495–496 [“In a case such as this where fundamental rights are affected by the exercise of discretion by the trial court, we recognize that such discretion can only be truly exercised if there is no misconception by the trial court as to the legal basis for its action. Thus, where, as here, some of the grounds for the trial court's action have been determined on appeal to be supportable and other grounds unsupported, the matter should be remanded for the trial court's redetermination of the ultimate issue on the proper grounds”].) In light of our determination that some of the jurisdictional findings against mother must be reversed, it is

appropriate to reverse the dispositional order as to mother as well, and to remand the matter to the juvenile court to enter a new dispositional order. (See *In re R.M.* (2009) 175 Cal.App.4th 986, 991.)

We note that our decision that some of the allegations against mother are not supported by substantial evidence does not change the children's status as dependent children of the juvenile court, nor does it constrain the juvenile court from re-issuing a dispositional order containing the same requirements as the prior order, including, without limitation, removing the children from mother's physical custody and ordering mother to submit to drug tests. However, the discretion to issue a dispositional order must be exercised in the first instance by the juvenile court. We therefore remand this matter to the juvenile court to make any reasonable orders that it deems necessary to protect the children.

DISPOSITION

With respect to the juvenile court's jurisdictional findings, we direct the court on remand as follows: (1) As to counts b-1, b-2, d-1, d-2, j-1, and j-2, the court is directed to strike the findings that mother knew or should have known of sexual abuse of K. and Joshua by Valentino, and that mother failed to protect the children from sexual abuse. (2) As to count b-6, the court is directed to strike the finding that mother is a current abuser of methamphetamine. In all other regards, the jurisdictional findings are affirmed.

We reverse the dispositional order as to mother, and we remand the matter to the juvenile court to enter a new dispositional order consistent with the views expressed in this opinion.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.